

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Application of

BANCO SANTANDER (BRASIL) S.A.,

Case No. 22 Misc. _____

For an Order Pursuant to 28 U.S.C. § 1782 to Conduct
Discovery for Use in Foreign Proceedings

EX PARTE APPLICATION OF BANCO SANTANDER (BRASIL) S.A.
FOR DISCOVERY PURSUANT TO 28 U.S.C. § 1782

Applicant BANCO SANTANDER (BRASIL) S.A., by and through its undersigned counsel, Kellner Herlihy Getty & Friedman LLP, along with a Memorandum of Law, the Declaration of Felipe Vieira, dated January 19, 2022 and accompanying Exhibits, and the Declaration of Thomas Vandenabeele dated January 24, 2022 and accompanying Exhibits, respectfully submits this Application for judicial assistance pursuant to 28 U.S.C. § 1782, in obtaining documentary and testimonial evidence for use in a foreign proceeding. The Applicant seeks evidence from: Citibank, N.A.; The Bank of New York Mellon; Société Générale, New York Branch; HSBC Bank USA, N.A.; BNP Paribas USA; JPMorgan Chase Bank, N.A.; Barclays Bank PLC; Bank of America, N.A.; Wells Fargo Bank, N.A.; and The Clearing House Payments Company, LLC (together the “Respondents”), each of which is found in this District.

Applicant satisfies each of the three statutory requirements set forth in 28 U.S.C. § 1782.

First, the Respondents from whom discovery is sought are each found within the Southern District of New York. *Second*, the discovery sought by Applicant is “for use” in connection with contemplated claims within the pending proceedings described in the accompanying Declaration of Henrique Rodrigues Forssell against Ducoco Produtos Alimentícios S/A, Ducoco Alimentos S/A, Malibu Holing S/A, and Nelson Nogueira Pinheiro (the “Foreign Defendants”) before the

2nd Civil Court of São Paulo, Brazil (“Foreign Proceeding”). *Third*, Applicant is an interested person within its capacity as plaintiff in the Foreign Proceeding.

Further, each of the discretionary factors established in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 264-65 (2004), militate in favor of granting this Application. *First*, there is no expectation that any of the Respondents from whom discovery is sought will be participants in the Foreign Proceeding and, as such, this Application constitutes the only practical and timely method for obtaining the needed evidence for use there. *Second*, there is no indication that the foreign tribunal would be unreceptive to the evidence. *Third*, the documentary and testimonial evidence sought through the instant Application would likely be admissible in the Foreign Proceeding and does not otherwise circumvent any proof-gathering restriction under the laws of Brazil. *Fourth*, the discovery sought through this Application is not unduly intrusive or burdensome because it is of limited scope. The proposed requests to the Respondents seek limited records relating to wire transactions for which the Respondents were involved as originating bank, beneficiary bank, intermediate or correspondent bank to CHIPS, Fedwire, or where the Respondents otherwise facilitated interbank funds transfers related to the Foreign Defendants, as well as documents relating thereto, for the limited period beginning July 27, 2016 to the present.

Accordingly, for the reasons described in the accompanying Memorandum of Law, the Declaration of Felipe Vieira and accompanying Exhibits, and the Declaration of Thomas Vandenabeele and accompanying Exhibits, Applicant respectfully requests that the Court issue an Order in the proposed or substantially similar form as filed with this Application (1) granting judicial assistance pursuant to 28 U.S.C. § 1782, (2) authorizing Applicant to serve subpoenas in substantially similar form as attached hereto as Exhibit A, and (3) waiving service by Applicant

of the Application on the Foreign Defendants, the Discovery Targets¹ and the Respondents, and of the Order and subpoenas on the Foreign Defendants and the Discovery Targets.

Dated: January 24, 2022

Respectfully submitted,

By: 
Thomas Vandenabeele

KELLNER HERLIHY GETTY & FRIEDMAN LLP
Attorneys for BANCO SANTANDER (BRASIL) S.A.
470 Park Avenue South–7th Floor
New York, NY 10016-6819
Telephone: 212-889-2121
Email: tv@khgflaw.com

¹ As defined in the Declaration of Felipe Vieira, dated January 19, 2022.